



May 30, 2002

Ms. Angela M. DeLuca  
Assistant City Attorney  
City of College Station  
P.O. Box 9960  
College Station, Texas 77842

OR2002-2934

Dear Ms. DeLuca:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163696.

The College Station Police Department (the "department") received a request for copies of "any and all electronic communications sent or received from all mobile computer equipped police patrol units for the period of 10:30 p.m. of the 17<sup>th</sup> day of January, 2002, until 2:30 a.m. the 18<sup>th</sup> day of January, 2002." You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You argue that section 552.108 of the Government Code excepts the responsive information from public disclosure in its entirety. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the responsive information relates to a pending prosecution as the requested documents reflect the shift of the arresting officer involved in the corresponding prosecution. Based upon this representation, we conclude that the release of the information reflecting the above referenced arrest and subsequent pending prosecution would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active

cases). The department may therefore withhold the information we have marked in Exhibits C-55, C-60, C-62, and C-63 from public disclosure under section 552.108(a)(1). We do not find that the remaining information is related to the prosecution in question and you have failed to address how and why the release of the remaining information would interfere with the detection, investigation, or prosecution of crime. Therefore, we do not have any basis to find that the release of the remaining information would interfere with the detection, investigation, or prosecution of crime.

You further claim that the responsive information is excepted from disclosure pursuant to section 552.108(b)(1). Section 552.108 of the Government Code states that an internal record or notation of a law enforcement agency that is maintained for internal use in matters relating to law enforcement is excepted from required public disclosure if release of the internal record or notation would interfere with law enforcement. Gov't Code § 552.108(b)(1). Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

The department argues that "these internal notations [in Exhibits C-43, C-54, C-58, C-62, and C-75] reveal the investigative techniques used by several College Station Police Officers and release of such information would interfere with law enforcement." We disagree with the department's argument. Here, the request is for electronic messages made during a specified time period. A determination of whether section 552.108(b)(1) excepts the messages from public disclosure is made on a case-by-case basis depending on the department's demonstration of how release of the requested messages would interfere with law enforcement. After reviewing the submitted information, we conclude that, except for the information we have marked under section 552.108(a)(1), you have failed to demonstrate that release of the information at issue reveals the department's investigative techniques or interferes with law enforcement. Thus, you may not withhold the remaining requested information under section 552.108(b)(1).

Finally, you claim section 552.103 as an exception from disclosure for the responsive information. Section 552.103 of the Government Code provides as follows:

- (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

In regard to the non-section 552.108(a)(1) information, you have failed to explain, and it is not apparent from the information, how the remaining electronic communications relate to the anticipated litigation in question. Therefore, the department has failed to meet both prongs of the test mandated by section 552.103. Thus, the department may not withhold the remaining information under section 552.103 of the Government Code.

In conclusion, the department may withhold the information we have marked in Exhibits C-55, C-60, C-62, and C-63 from public disclosure under section 552.108(a)(1). All other information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/sdk

Ref: ID# 163696

Enc: Submitted documents

c: Mr. Jim W. James  
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(w/o enclosures)